

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

LOUIS FLORES,

*Appellant-Appellant,*

v.

UNITED STATES DEPARTMENT  
OF JUSTICE,

*Respondent-Defendant.*

SDNY : 17-CV-0036  
2d Cir : 17-3621

**AFFIDAVIT**

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1/. To the best recollection of Appellant **LOUIS FLORES** ("Appellant"), at the Preliminary Conference of *Flores v. DOJ* (17-CV-0036), held on 13 April 2017, the District Court Judge **JOHN KOELTL** stated that protecting the reputation of the U.S. Attorney's Office would be one of the factors that would determine whether the Court would compel Defendant **U.S. DEPARTMENT OF JUSTICE** (the "Agency", the "DOJ," or the "Government") to release records sought under a request (the "FOIA Request") filed pursuant to the Freedom of Information Act ("FOIA").

2/. The statements were made after a Court officer called the Court into session on the day of the Preliminary Conference, during which time the Court's business was conducted in open Court. At no time when the prejudicial statements were made was there ever a side bar or a

conversation had outside of the presence of Defense counsel. Defendant DOJ is represented by Assistant U.S. Attorney **REBECCA TINIO** of the U.S. Attorney's Office for the Southern District of New York. During the Preliminary Conference, the Court was attended by other Court employees and other Parties on the Docket for that day's proceedings.

3/. Because the District Court Judge made prejudicial statements, Appellant was worried about the outcome of the District Court case. Consequently, Appellant desperately attempted to privately settle the District Court case with Defense counsel.

4/. When it became clear that Defense counsel was not going to make a good faith effort to settle the District Court case, Appellant became worried about how he was going to obtain justice in the District Court.

5/. Appellant sought intervention from Chief U.S. District Court Judge **COLLEEN MCMAHON** three times. (Dkt. Nos. 25, 27, 38) Appellant was seeking the reassignment of the District Court case. Never once did the Chief U.S. District Court Judge answer the entreaties.

6/. Appellant requested copies of the Transcripts of the two hearings before the District Court Judge.

7/. The District Court Judge ordered the Agency to obtain the Transcripts and to provide them to Appellant. Any communication that took place between (x) the Agency, the Court, and the District Court Judge's chambers and (y) the Court reporters' office took place outside

the presence of Appellant. The Court reporters' office is : Southern District Reporters, P.C.

8/. When the Court reporter produced a Transcript of the Preliminary Conference, the prejudicial remarks of the Hon. Judge Koeltl had been scrubbed from, or misrepresented in, the Transcript of the Preliminary Conference.

9/. Appellant notified Defense counsel, the Court reporter, and the District Court Judge's chambers that the Transcript needed to be corrected.

10/. Appellant has made requests for electronic recordings and/or for the Transcript to be compared against the original punch card tape of the proceedings made by the Court reporter, but these records have been denied to Appellant, or else Appellant has been told that these records do not exist.

11/. On 19 October 2017, Appellant left a message for Don Fletcher, the courtroom case manager for the Hon. Judge Koeltl, requesting audio files of the proceedings of the Preliminary Conference. The Judge's chambers never answered this request.

12/. On 31 October 2017, Appellant called the Court reporters' hotline number and asked for advice on how the Transcript could be corrected of information that did not accurately portray statements made by the District Court Judge.

13/. The Court reporters' office informed Appellant that the District Court Judge had discretion over the Transcript and that any changes sought by Appellant would need to be made or approved by the Court.

14/. The Court reporters' office referred Appellant to a particular Court reporter, and Appellant was instructed to send an e-mail request to : csiwik@sdreporters.com.

15/. There is no procedure that would allow the Transcript to be conformed with any electronic recording or punch card tape or whatever medium is now used to record the proceedings without the Hon. Judge Koeltl's involvement.

16/. Because Appellant has appealed an Order denying Appellant's motion seeking leave to disqualify the Hon. Judge Koeltl over His Honour's prejudicial statements, the Hon. Judge Koeltl is in a position to not only deny Appellant's motion (as His Honour so did), but to block any effort to "correct the record" of the Transcript.

17/. At the Pre Trial Conference, which took place on 19 October 2017, the Hon. Judge Koeltl stated that the conference had been called, because Defense counsel requested the hearing to request a briefing schedule.

18/. Appellant was never copied on such a request, indicating that the Court was having *ex parte* communication with Defense counsel.

I, **LOUIS FLORES**, swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct.  
(28 U.S.C. § 1746 ; 18 U.S.C. § 1621.)

Dated : Jackson Heights, New York  
29 January 2018

  
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